The Solicitors' Journal
and Weekly Reporter.
(*ESTABLISHED IN 1857.*)
LONDON, AUGUST 10, 1918.

ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:
£1 10s.; by Post, £1 12s.; Foreign, £1 14s. 4d.
HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

An Imperial Court of Appeal.

THE STATEMENT issued recently as to the matters considered at the meeting of the Imperial Conference contains the following:—

> The sixteenth meeting was held on July 26th, when a resolution was passed urging that the question of replacing the present dual system of appeal by the constitution of one Imperial Court of Appeal demands the prompt consideration of the British Government, and that the Lord Chancellor should be invited to prepare a memorandum on such proposals as in the opinion of the British Government are practical for the purpose, with a view to a decision at the next Imperial Conference.

We assume that this refers to the system of appeals to the House of Lords and to the Judicial Committee, and revives a project which we believe was under consideration before the war for uniting these two tribunals of ultimate appeal. The practical difficulty lies in the difference between the practice of the two courts, and chiefly in the separate judgments delivered in the House of Lords and the single judgment delivered, in the form of advice to the Crown, in the Judicial Committee. In other respects the differences are of slight importance. There are no doubt certain conveniences in a single judgment, especially when it has to be taken as authoritative in remote countries. But in this country the system of separate judgments in the House of Lords is highly valued, and it should not be interfered with save after great consideration and under strict necessity. We quite recognize that important and useful judgments are often delivered in the Judicial Committee, but we think we are right in saying that, in general, they lack the weight and interest of the judgments in the House of Lords; and if, in deference to wider needs, a change has to be made as regards final appeals here, it will be made with regret.

Alien Enemies and Actions by Partners.

AN INTERESTING point as to the capacity of partners to sue for a debt where one of the partners is an alien enemy has been decided by the House of Lords in *Rodriguez* v. *Speyer Brothers* (*Times*, 3rd inst.), though not without considerable difference of opinion. The respondent firm, who were the plaintiffs in the action, consisted at the outbreak of war of six members, one of whom was a German resident in Germany, and who is still an alien enemy. Of the other five, four are British subjects and one is an American citizen. The interest of the alien enemy partner was 2½ p.c. in profits and losses, and he was indebted in a large sum to the firm. The action, which was brought in the firm's name, was to

recover £29,772, and it was pleaded in defence that it could not be maintained by reason of the enemy status of one partner. Of course, the outbreak of war had the effect of dissolving the partnership: *Griswold* v. *Waddington* (16 Johnson 438, America); *Esposito* v. *Bowden* (7 E. & B. 763); and if the rule that an alien enemy cannot sue is to be strictly applied, then a suit by the partners in the late firm cannot be maintained. Substantially, however, the suit is part of the winding-up of the affairs of the firm, and is required in the interest of the competent partners. The majority in the House of Lords (Lord FINLAY, C., and Lords HALDANE and PARMOOR, Lords ATKINSON and SUMNER dissenting) held that there was no need to apply strictly the doctrine laid down by Lord STOWELL in *The Hoop* (1 Ch. Rob., p. 20), that an alien enemy is *ex lege* and has no standing in a court of law. This has already been broken in upon by admitting him as a defendant (*Porter* v. *Freudenberg*, 1915, 1 K. B. 857), and Lord FINLAY in his judgment pointed out that the present action would clearly have been competent if the alien enemy partner had been joined as a co-defendant: see *Tomlinson* v. *Broadsmith* (1896, 1 Q. B., p. 392); and a suit which was maintainable in one form should not fail because a party was on the wrong side on the record. In this view it makes no difference whether the interest of the alien enemy partner is large or small; and it is obviously for the general convenience that a suit of this nature should be maintainable. But that may be said of all actions by enemy aliens and justifies the Continental practice which allows such suits. The real protection to the public interest lies in the prohibition against the fruits of the litigation reaching the alien enemy till after the war. Meanwhile, the maintenance of the suit enables private accounts to be adjusted.

The Right to Costs.

COSTS AND the burden of costs are an important, though troublesome, point in litigation. As to the policy of carrying on a system of litigation without imposing on the unsuccessful party the penalty of paying for his obstinacy by being mulcted in costs, this is a problem on which the speculative jurist may have two opinions. In America no costs are recoverable in civil proceedings, but there the jury can award as damages such a sum as they consider will compensate the successful party for the expenses he has incurred in vindicating his rights. Perhaps such a system would work in England, but it would involve a great departure from tradition. In the meantime lawyers must discover, as best they can, the application to each particular case of our complicated rules as to costs. *Reid, Hewitt & Co.* v. *Joseph* (*ante*, p. 715) illustrates one of these rules. Before the Judicature Acts of 1873 and 1875 costs at common law followed the event to this extent that, while the general costs of the action went to the party who had succeeded on the whole, the costs of any issues on which the other party had succeeded went to him. This was a matter of right, not of judicial discretion; it was enacted by the Common Law Procedure Act, 1852, and worked out in Rule 62 of the *Regulæ Generales* of Hilary Term, 1853. But order 55 of the Judicature Act Rules of 1875 altered all that. Costs were put in the discretion of the court. In a jury trial, however, the costs were still to follow the "event"—the word was used in the rules—unless for good cause the judge otherwise ordered. In 1883 another change took place. Order 55 was replaced by ord. 65, r. 1—at least the present rule was introduced then, and the change was completed in 1902. The effect is that, in any "issue" tried by a jury, costs are to follow the "event." This, of course, raises two troublesome questions of definition and interpretation, namely, What is an "issue"? and what is meant by "the event"?

Costs and the "Event."

IN *Reid, Hewitt & Co.* v. *Joseph* (*supra*) these questions have led to an interesting conflict of opinion in the courts. BAILHACHE, J., and the Court of Appeal took one view; the House of Lords was unanimously of the contrary opinion. The facts are not complicated, nor yet obscure. The respondent sued the appellant company to recover £169 14s. 2d., the balance of an account for goods sold. The defendants put in three pleas by way of defence—that the goods were not up to sample, that there was an overcharge on the packing, and payment into court. At the trial the plaintiff admitted that the goods were not up to sample, but succeeded in disproving the plea of overcharge on the "bags." The result was that he recovered the greater part of the sum claimed, in fact £2 11s. more than the sum paid into court by the defendants. Clearly the plaintiff was entitled to the general costs of the action, as he had succeeded in recovering something. But the question then arises whether the costs of the first issue, namely, whether the goods were up to sample, on which the plaintiff failed, are merely a part of the whole costs of the action, and, as such, go to the successful plaintiff, or are costs of a separate "issue," and, as such, go to the party successful on that "issue." By a long line of authorities—for example, the cases of *Myers* v. *Defries* (1880, 5 Ex. Div. 180), and *Ellis* v. *Da Silva* (1881, 6 Q. B. D. 521)—it has been decided that the words of the rule, "costs shall follow the event," mean (1) that the general costs shall go to the party successful in the action as a whole, and (2) the special costs of the separate issues shall be distributed according to the result of the issues. Now, the question here is simply whether a defence that does not go to the root of the claim—*e.g.*, a defence as to part only of the sum claimed, or, as in this case, a defence as to the quality and value of the goods—raises a separate issue. The House of Lords held that it did, and that on this issue the defendants must get their costs.

Dearle *v.* Hall.

WE RECENTLY referred (*ante*, p. 676) to the remarkable vitality displayed by some very old and well-known cases which, though constantly discussed and criticised, never seem to reach the stage of unquestioned finality, and on that occasion we gave as an instance the case of *Young* v. *Grote* (4 Bing. 253). Another of such cases, which has recently been considered, is *Dearle* v. *Hall* (3 Russ. 1), decided nearly a century ago by Sir THOMAS PLUMER, M.R., who described it as a case of some novelty. The short point decided was that an assignee of an equitable interest in personalty, who fails to give notice of his interest to the legal holder of the fund, will be postponed to an assignee who, though subsequent in date, gives such notice, or, to put it more shortly still, priority of notice will prevail over priority of assignment. As thus stated, the decision is remarkably plain and simple, and would seem to call for no comment or criticism; but it has met with both in no small measure, and though it has become an established rule of law, that position does not seem to have been acquiesced in by some very eminent judges without something like a protest. COZENS-HARDY, J., in *Lloyds Bank* v. *Pearson* (1901, 1 Ch. 872), expressed the opinion that it was founded on no definite principle, and Lord MACNAGHTEN in *Ward* v. *Duncombe* (1893, A. C. 20) said: "I am not sure that the doctrine rests upon any very satisfactory principle. I am not sure that it has not been established at the expense of principles at least as important as any of those to which it has been referred." The principle of the decision is, however, at this stage of less importance than its application. Lord MACNAGHTEN thought that the rule ought not to be extended, and EVE, J., agreed with him in the recent case of *Hill* v. *Peters* (reported *ante*, p. 717). In that case the plaintiffs sought to extend the doctrine to a declaration of trust; but the learned Judge held that it had no application to a beneficiary who had no right to possession, and who could only claim to receive the fund through his trustee. No doubt there are cases, like the one just referred to, where it would not be proper to apply the principle; but there are others to which, it has been suggested, the rule might be extended with advantage, and one of these suggestions is that it should apply to all equitable interests in land, so as to avoid risk on taking a second mortgage. It is not at all likely that the courts will ever adopt this suggestion, though it would really be less of a novelty than was the original rule when laid down nearly a century ago.

The Judicial Committee and Southern Rhodesia.

THE EFFORT of the Judicial Committee in the *British South Africa Company's case* (*Times*, 30th July) to deal on some sort of legal principle with the title to land in Southern Rhodesia forms interesting, if somewhat difficult, reading. At "all material times" prior to the entry of the Chartered Company upon the scene LOBENGULA was paramount chief of Matabeleland and Mashonaland—now Southern Rhodesia. Certain mining and other grants made by him before 1890 were acquired by the company, and at first the company, which derived its powers from the British Crown, was technically a subject of LOBENGULA, and derived its actual rights of administration from him. In 1893 war with LOBENGULA ended in his defeat and death, and it would seem that, technically, the Crown became sovereign, with the company administering the country as the agent of the Crown. A scheme of administration was formulated by the Colonial Office in 1894, and under an Order in Council of 1898 a Legislative Council, consisting of nominated members and elected members, was established. Meanwhile, lands had been granted out by the company, and other lands occupied by it, and there remained a vast area of unalienated land. It is as to the title to this last that controversy has arisen. The Legislative Council in 1914 passed a resolution which, shortly stated, was as follows:—(1) The unalienated land was not the private property of the company, and the company only enjoyed powers over it by virtue of authority conferred upon it by the Crown, as the governing body charged by the Crown with the task of administration; (2) that any ownership acquired by the company was vested in them as a public asset, and the company had no private title to the lands or the revenues from them; (3) that on the company's administration ceasing, the lands then unalienated would be the property of the Government for the time being. Looking only to the Crown as the sovereign of the country in succession to LOBENGULA, and to the company as the agent of the Crown, and applying ordinary legal principles, the first part of the resolution seems clear, and the Judicial Committee affirmed it; they denied the third, and as to the second affirmed the right of the company to dispose of the unalienated lands in a due course of administration, and to apply the moneys and revenues received therefrom in reimbursement of outlays on administrative account. But the difficulty was in arriving at a definite view of the respective rights of the Crown and the company in regard to Southern Rhodesia, and here Lord SUMNER, who delivered the judgment, had to go "sounding on a dim and perilous way" through the rights or quasi-rights of the aboriginal tribes—a way in which we need not attempt to follow him. Practically the position was cleared by his conclusion that "whoever now owned the unalienated lands, the natives did not."

Change of Name.

AN INTERESTING point of law is suggested by the recent Defence of the Realm Regulation 14 H (*ante*, p. 720). This prohibits any person "not being a natural-born British subject," from assuming, using, or continuing to use for any purpose "any name other than that by which he was ordinarily known at the date of the commencement of the war." There are exceptions in favour of women who marry and assume their husband's name, persons who assume a name in pursuance of a royal licence, and persons who obtain exemption from a Secretary of State. Now, the question which at once arises is, what is the name by which a man or woman is "ordinarily known"? In most cases, of course, no difficulty arises. But in the case of literary men it is the common custom to assume a *nom de plume*, and a like custom prevails with actors and other classes. Such people are often known to all except their close personal friends by this special name. Is it, then, the name by which they are "ordinarily known," or is that term confined to the name which they never use except when they sign an official document? Again, some men use a variation of their Christian name as a business signature on cheques, &c., and are known to the business world by that signature, not their full baptismal name. What is the name by which they are "ordinarily known" for purposes of the above regulation? The problem is by no means easy to solve.

Actions Against Military Superiors.

NOT for a very long time has the House of Lords delivered a judgment of such great importance as that recently pronounced in *Fraser* v. *Balfour* (*ante*, p. 680). Commander FRASER had been retired from active service by the Board of Admiralty on the report of a Medical Board that he was "unfit for service owing to mental instability." He himself regarded this decision as not justified by the facts, and certainly his conduct of his own case in the various courts before which he appeared shewed no signs of mental derangement; his contention was that he had offered to the Admiralty inventions which were not appreciated and which led to their adverse view of his mental stability. However this may be, in the event he brought an action against Sir FREDERICK HAMILTON and Mr. BALFOUR, two of the Lords of the Admiralty. Admiral HAMILTON was sued because he was the "Second Sea Lord," *i.e.*, that member of the Board especially charged with the duties of providing "personnel" (the first and third Sea Lords controlling "Operations" and "Matériel" respectively). Mr. BALFOUR was sued because, as First Lord at the material dates, he had vested in him the full power of the Board of Admiralty. The action was framed in respect of three distinct alleged torts, (1) false imprisonment, (2) detention in hospital, and (3) malicious acts expressly done with the intent of wrongly retiring him from the Navy.

Now, when Commander FRASER brought his action, he had a difficulty in his way, namely, the technical difficulty as to whether or not a person subject to military or naval law at the date of his alleged wrongs can take proceedings against his superior officer in respect of those alleged wrongs. The general principle on this point has long been assumed to be this: When an officer or soldier enters the service of the Crown he accepts the "Articles of War," *i.e.*, certain sections of the Army Act which regulate the relations between members of the forces, and which take the place of the old Military or Naval Articles of War (see Manual of Military Law, 1914 Edition, pp. 136-8). The effect of this is that he contracts out of his ordinary civil and criminal remedies against other members of these forces in respect of all acts which they do in the exercise of their military authority. In other words, he waives these remedies and receives instead certain parallel remedies (in practice largely nominal) for his grievances contained in the "Articles of War," *i.e.*, sections 42 and 43 of the Army Act. It is this waiver which disentitles him to sue in tort for these wrongs, and not any rule of the Prerogative.

The principle just laid down is supported by a certain number of decided cases of rather different kinds, but nowhere supported very clearly. Some of these cases, *e.g.*, *Jekyll* v. *Moore* (2 New Reports, 341) and *Horne* v. *Bentinck* (4 Moore, 563), were actions for defamation of character contained in malicious statements made in delivering the judgments of military courts and in furnishing the military report of a court of inquiry; and the decision of the courts is simply that such occasions are absolutely privileged—express malice cannot be alleged to rebut the presumption of privilege. These cases may be eliminated, since obviously they are quite consistent with accepted rules of the common law in civil judicial matters and lay down no novel principle. Some other cases turn on the "privilege of an action," *i.e.*, namely, the extent to which a person in authority can at common law exercise rights of correction, by restraint or chastisement, over his subordinates. These, too, are not decisions which involve any novel rule. But three cases remain which hitherto, until the judgment of the House of Lords on which we are commenting, were supposed to lay down the doctrine explained in our last paragraph and which require a fuller note.

The most important of these cases is *Sutton* v. *Johnstone*

(1786, 1 Term. Rep. 493, 784). SUTTON had been court-martialled at the instance of JOHNSTONE for failing to obey an order directing him to slip his cable and engage the enemy's ships. He was honourably acquitted by the court-martial on the ground that, in the condition of his ships, he could not reasonably have been expected to obey the order. Thereupon he brought against JOHNSTONE an action for "malicious prosecution," and in the court of first instance recovered £5,000 damages. A new trial resulted in a verdict for £6,000. Then a motion in the Court of Exchequer was made in arrest of judgment, *i.e.*, what in substance amounted to an appeal to the Divisional Court against the *nisi prius* judgment of Judge and jury; such motions are now abolished, the appeal going at once to the Court of Appeal. This motion failed; the Court held that the action would lie. But on further appeal to the Court of Exchequer Chamber the defendant scored a success. That Court, indeed, did not hold as a matter of *res judicata* that no action would lie against a superior officer for a malicious exercise of his authority; they non-suited the plaintiff on the ground that his superior had an absolute discretion to decide whether or not he would place any of his officers on trial for disobedience to a lawful order, and, therefore, that he could not be said to have acted without reasonable and probable cause in so doing. This seems a sound enough point of view, and does not in itself give occasion for the extended effect given to this judgment in subsequent cases. But the Court also expressed a view, which is mere *obiter dictum*, that no action by a subordinate against a superior officer will lie for any act, however malicious, done by the latter in the exercise of authority which empowers him to do, *without malice*, acts of the same character as that he has done. This *obiter* has led to the subsequent decisions of a far-reaching kind which have followed *Sutton* v. *Johnstone*.

In the next leading case, more than half a century later, *Dawkins* v. *Paulet* (L. R. 5 Q. B. 94), the majority of a divided Court of Queen's Bench (MELLOR, LUSH, and HAYES, JJ.) definitely affirmed as good law the above *obiter dictum* of the Court of Exchequer Chamber, whereas Lord Chief Justice COCKBURN, dissenting from his brethren, emphatically repudiated it. This case was an action for defamation of character brought by a colonel against his general for certain written reports and verbal statements about the colonel's military character made by the defendant in the ordinary course of his military duty, and which the plaintiff alleged to have been malicious. The action was one for libel, but, unlike the cases to which we referred in our third paragraph, the defamatory statements were not made in the cause of military judicial proceedings, so that no question of absolute privilege could arise; at the best, the occasion was merely privileged in the ordinary way, and such qualified privilege is always rebuttable by proof of express malice. Unless, then, the wider doctrine laid down in *Sutton* v. *Johnstone* (*supra*) as a matter of *obiter* were to prevail, an action would certainly be competent. The majority affirmed that wider doctrine, asserted that the colonel had by accepting a commission waived his common law rights against a superior officer, and that his action would not lie.

The third of these important cases, *Marks* v. *Frogley* (1898, 1 Q. B. 888), is a much more recent case. It accepted the doctrine to the fullest possible extent, nay, pushed it a stage further. For it held that volunteers and militiamen serving their brief annual period of training with His Majesty's Regular Forces, and thereby subject for the time being to Military Law, are caught within the same net. Acts done in the exercise of military authority by a superior, and committed during this period, cannot be made the subject of proceedings by an aggrieved subordinate. Thus the doctrine seemed well established by the authority of every tribunal except that of the House of Lords.

Such then was the main difficulty Commander FRASER had to face at the outset; other difficulties, of course, remained and still remain in his way. A summons to strike out his statement of claim as disclosing no ground of action was the natural mode of counter-attack open to the defendants in the light of the three decisions on which we have commented, and this mode of defence they naturally adopted. Commander FRASER'S claim was struck out by the Master, the Judge, and, finally, the Court of Appeal; they could, indeed, do nothing else. But the House of Lords is not bound by any of the decisions quoted. It refused to accept them as good law, at any rate without further and elaborate argument on the grave constitutional issue involved. It follows that the action could not be got rid of by the summary method of striking out the statement of claim. The counts of false imprisonment and detention, indeed, were got rid of; but the plaintiff was given leave to amend his claim in such a way as to raise the issue whether or not any of the defendants had in fact acted maliciously in taking steps to cause his retirement. Whether the facts afford any real evidence of such express malice, of course, is another question. But the value of the judgment of the House of Lords is that it recognises the graver constitutional principle as still an open question, not closed in favour of the less liberal view. Moreover, the judgments of the Law Lords—who were unanimous in the views they expressed—show a decided inclination against the narrow doctrine of the Court of Exchequer Chamber.

The Development of German Prize Law.

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VIII.

DESTRUCTION OF VESSEL AND CARGO—(*cont.*).

THE decision in *The Glitra case* was followed in *The Indian Prince*.[1]

> The court which pronounced judgment in *The Glitra case* decided that if an enemy prize be legally destroyed, compensation is not due for neutral property on board the vessel and destroyed with it. This must also be maintained in regard to the counter-statements brought forward. According to general principles, a claim does not arise if the act through which the cargo was injured was not illegal, but legal, nor is any basis for a claim to compensation afforded by a positive instruction of the Prize Code. This also applies to art. 110 of the Prize Code in connection with art. 9, to which the claimants have referred. For, however correct the conclusion may be that, since the captain is not entitled to take neutral property off enemy ships in order to use it, he is certainly not entitled to destroy it unused, nothing is gained for the matter which is here in question. The question here is, whether the commander is compelled by international law to refrain from sinking an enemy vessel when he has a legal right to do so, because its destruction would mean the loss of the neutral goods on board, especially if it is impossible for him to bring the vessel in. After repeated examination, the court must continue to answer this question in the negative. In this respect reference can only be made to the former decision. In particular, it is incorrect to say that the former decision was based on the fact that, by shipping their goods in an enemy vessel, the shippers took the risk of capture and destruction, and therefore could not claim compensation. On the contrary, in taking a general view of the matter, the expression to the effect that the neutrals had the free choice, whether they would entrust their goods to the enemy ship and run the risks in connection therewith, is only used in order to shew that the denial of compensation is not only correct from a legal point of view, but also cannot be considered as unreasonable.
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> The principal reason which is decisive of the case in question lies in the actual dependence of the cargo on the fate of the ship, in consequence of which the cargo has to suffer the injury resulting from an act directed against the ship legally committed according to prize law. It cannot be seen why this principle, which is generally acknowledged and placed beyond doubt by the report of the drafting committee upon article 64 of the Declaration of London, should apply only to the capture of a ship and not to its just destruction.

In *The Indian Prince* the question was further complicated by the provisions of the treaty between the United States and Prussia:—

> There remains, in consequence, only the question whether the plaintiff's claim is justified by the treaty of commerce between Prussia and the United States of North America. But this must also be answered in the negative.
>
> Having regard to the practice which has been followed on both

[1] Superior Court of Prize, 15th April, 1916.

sides not only during the present war but also in previous cases, the principles of that treaty must also apply to the relations of the German Empire to the United States. As a matter of fact, however, this treaty contains nothing in favour of the claimants.

According to Article XII. of the treaty of 1828, Articles XII. and XIII. of the former treaties of 1785 and 1799, and Article XII. in the original form of 1785, are applicable. In this Article XII., the principle "Free ships make free goods" is agreed upon. While the treaties which the United States made at the same time with other States agreed upon the principle "enemy ships, enemy goods," an exception being made only for goods which were shipped before the outbreak of the war or within a certain period thereafter, the treaty with Prussia is silent on the question "enemy ships, enemy goods," and it appears doubtful from the treaty how this subject is to be understood.

It is unnecessary to reproduce the examination of the treaties which led to the decision that they did not justify the plaintiff's claim to compensation. The judgment concluded as follows:—

> The principle "enemy ships, free goods," applies also to the United States. Its validity, however, is not derived from any special treaty, but from common international law as laid down in the Declaration respecting Maritime Law adopted at Paris in 1856, which, according to the German Prize Code, applies also to countries, like the United States, which did not agree to that Declaration. Likewise, in regard to the question whether in such cases as the one under consideration the owners of neutral goods are to receive compensation, the same principles must be applied towards the citizens of the United States as towards the subjects of other neutral countries. These principles are laid down in *The Glitra case*.[2]

Kohler[3] denies all liability for the destruction of neutral goods on board an enemy vessel sunk within the war zone, but admits that in so far as the neutral property is not destroyed it must be restored.[4] The same view is expressed by Scholz[5] and Strupp.[6]

Nöldeke[7] points out that neither the precedents nor the general principles of international law require compensation to be made. He states:—

> Such an obligation can at most arise only where the war vessel destroying the enemy vessel and the neutral cargo is guilty of a violation of law. The law of nations does not recognize the existence of a general principle that a state is responsible in damages where, in the exercise of its rights, it incidentally affects private rights. The provision of art. 53 of the Declaration of London, which provides that in the case of the destruction of neutral ships a liability for the payment of compensation of neutral cargo destroyed with the ship arises, without regard to the guilt of the war vessel, is an exceptional provision not susceptible of extensive interpretation by analogy.

In reference to the provisions of the Declaration of Paris, Nöldeke says:—

> It must be taken into consideration that in 1856 the value of the cargo seized was the principal point at interest in the law of prize. The purpose of art. 3 was to prevent the enrichment of the belligerents at the cost of neutrals but not at the cost of the opposing belligerents. Therefore the acquisition (*Aneignung*)[8] of neutral goods was prohibited and the duty imposed upon the belligerent to pay over the proceeds of neutral goods sold by him to the interested persons. Under no circumstances was it intended thereby to interfere with military operations, nor to require the belligerent to abstain from the sinking of an enemy ship where such sinking was a military necessity, by requiring him to have regard to the neutral character of a part or of the entire cargo. Furthermore, the Declaration of Paris does not prohibit an injury of neutral goods. From this viewpoint, therefore, no question can arise of the existence of a general rule granting immunity to neutral goods on board an enemy vessel. From this it follows further that a destruction of the cargo is permissible in all cases where the vessel itself may be destroyed, because a separation of the goods from the ship is impossible at that critical moment.

Heilfron[9] is of opinion that art. 114 of the Prize Code can give no right of compensation, because the entire Code is merely a set of instructions to naval commanders, issued by the Emperor in his quality as commander in chief,[10] and therefore incapable of imposing a liability in the state. He further argues that the Declaration of Paris, while protecting neutral goods in enemy vessels from seizure, does not protect them from destruction with the vessel.

Other German writers, such as Wehberg,[11] Schramm,[12] Hirschmann,[13] Rehm,[14] impose a liability for neutral cargo destroyed by the captor.

According to the last-mentioned writer, there is a liability to pay compensation for such cargo, both under the principles of international law and under the Prize Code. He also rejects the distinction made by the French courts to the effect that, where the destruction of the enemy vessel took place for military reasons (as in the case of *The Desaix*), no compensation is due. But where the enemy vessel is sunk while offering armed resistance or actively participating in hostilities, he states that no compensation is payable.[15] But mere presence in the war zone is not sufficient in his view to take away the right to compensation.[16]

Somewhat different questions arise in the case of the destruction of neutral prizes.[17] This matter was considered at great length at the Second Hague Peace Conference in 1907, but no decision was reached; and the question came up again at the London Naval Conference in 1909, where the rules were embodied in arts. 48-54 of the Declaration of London.

Art. 113 of the Prize Code provides:—

> Where a neutral vessel has been captured under the circumstances set forth in art. 39 for carrying contraband, or in arts. 77 and 78, for breach of blockade, or in art. 51, for rendering unneutral services, the commander may destroy the same,[18] provided that:
>
> (a) the vessel is subject to condemnation (*cf.* arts. 41, 51, and 80) and, in addition thereto,
>
> (b) the bringing into port would subject the war vessel to danger, or be liable to impede the success of the operations in which it is at the time engaged. Among other circumstances this may, *inter alia*, be assumed to be the case, if:
>
> (1.) the vessel, on account of its defective condition or by reason of deficiency of supplies, cannot be brought into port; or
>
> (2.) the vessel cannot follow the war vessel, and is therefore liable to recapture; or
>
> (3.) the proximity of the enemy forces gives ground for a fear of recapture; or
>
> (4.) the war vessel is not in a position to furnish an adequate prize crew.

Art. 114 provides that, in determining whether a neutral ship is to be destroyed, the captor must consider whether the damage to the enemy will outweigh the damages payable in respect of that part of the cargo which is not subject to condemnation. In all cases of doubt, a vessel not capable of being brought into port for adjudication should be released (see art. 119). And art. 115 provides that where a neutral vessel is destroyed, and it is held by the prize court that the circum-

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2 Accord., *The Indrani*, Hamburg Prize Court, 3rd July, 1915; *The Bowes Castle*, Imperial Court of Prize.

3 Der Lusitaniafall in Lichte des Völkerrechts, Deutsche Juristen Zeitung (1915), 538, 540. See also his article, Der Lusitania-Fall, in 9 Zeitschrift für Völkerrecht, 179.

4 But no damages are recoverable for delay or for damage to perishable goods: Scholz, Schadenersatz für Zerstörung von Prisen, Deutsche Juristen Zeitung (1915), 765, 768.

5 Schadenersatz für Zerstörung von Prisen, in Deutsche Juristen Zeitung, 1915, 765, 768.

6 Der Lusitania-Fall, 93-6.

7 Die Frage des Schadenersatzes für die Zerstörung neutraler Ladung mit feindlichem Schiff, 9 Zeitschrift für Völkerrecht, 447, 453, 454.

8 La marchandise neutre . . . n'est pas *saisissable* sous pavilion ennemi.

9 *The Lusitania*, Juristische Wochenschrift (1915), 486.

10 As already pointed out (*ante*, pp. 617, 618), this is not in accord with the prevailing view.

11 Seekriegsrecht, 295; Recht. (1915), 280; Oesterr. Zeitschrift. für öffentliche und private Versicherung (1914-15), 530.

12 Prisenrecht, 510.

13 Internationales Prisenrecht, 123.

14 Neue Fragen des deutsch-englischen Seekrieges: in Deutsche Juristen Zeitung (1915), 454. See also his article Der Unterseebootkrieg, 9 Zeitschrift für Volkerrecht, 20, 36.

15 This is in accord with the English view but opposed to the American cases.

16 For a contrary view on this point, see von Zorn in Der Tag, 17th March, 1915.

17 See Huberich, The Destruction of Neutral Prizes and the German Prize Code, 10 Illinois Law Review, 5-15; Huberich and Speyer, De Medea, Weekblad van het Recht, No. 9,759.

18 The destruction of a vessel need not be determined upon by the commander in person. The decision may be left to a subordinate officer: *The Tello*, Hamburg Prize Court, 11th December, 1915; Dismissed on Appeal, 29th June, 1916.

stances mentioned in article 113 (b) were not present, compensation must be made for the ship and cargo, regardless of whether these were subjects to condemnation or not. If it be found that the ship or cargo destroyed were not liable to condemnation there is a similar right to compensation.

The best known cases under this head are *The William P. Frye* and *The Medea*. The former was an American—and at the time a neutral—vessel, and was sunk by a German cruiser.[19] The Dutch steamer *Medea* was sunk by a German submarine while engaged in the carrying of contraband. In *The Medea case* it was held by the Hamburg Prize Court[20] that compensation must be paid for neutral cargo, not contraband, destroyed with the vessel.

[*Concluded.*]

CASES OF LAST SITTINGS.

House of Lords.

CLAWLEY *v.* CARLTON MAIN COLLIERY CO. (LIM.) 27th June; 1st, 2nd and 15th July.

WORKMEN'S COMPENSATION—ANY WEEKLY PAYMENT . . . MAY . . . BE REDEEMED . . . —REDEMPTION OF COMPENSATION SUBJECT TO FUTURE CONTINGENCIES—WEEKLY PAYMENT REDUCED BY WORKMAN BEING ALLOWED COTTAGE RENT FREE—WORKMEN'S COMPENSATION ACT, 1906 (6 ED. 7, C. 58), SCHED. 1 (17).

Under clause 17 of the First Schedule to the Workmen's Compensation Act, 1906, an award made on any application to redeem compensation must be final and complete. Therefore, an employer is not entitled to redeem, by the payment of a lump sum, a weekly payment which has been made for six months to the injured workman in a case where such weekly payment does not represent the full compensation due to the workman under the Act.

Appeal by the workman from an order of the Court of Appeal (reported 61 SOLICITORS' JOURNAL, 629; 1917, 2 K. B. 691).

THE HOUSE took time for consideration.

Lord FINLAY, C., said the question was whether, under clause 17 of the First Schedule to the Workmen's Compensation Act, 1906, the employer was entitled to redeem by payment of a lump sum a weekly payment which had been made for six months to the injured workman in a case where the weekly payment did not represent the full compensation due under the Act. The appellant was a collier, who, in the employment of the respondents in August, 1910, had an accident which resulted in lameness. His wages had been £1 16s. 4d. a week. For three years the respondents paid him half wages (18s. 2d. a week) on the basis of total incapacity. He partially recovered, and they ceased to make these payments in July, 1913. The appellant thereupon applied in the county court for compensation, claiming 18s. 2d. a week. After some correspondence, a settlement was arrived at by letters of 3rd and 4th October, 1913, on the following terms: (1) That the company should find Clawley a house near the colliery; (2) that they should find him work at which he could sit down; (3) that they should pay him wage at which he could earn £1 7s. 6d. a week, and that they would pay him, in addition, 8s. 10d. per week compensation. Clawley worked under these terms until November, 1916, except that he did not occupy the house offered under the first term of the agreement. In November, 1916, the company applied under clause 17 of the First Schedule to redeem the weekly payment of 8s. 10d. Their right to do this unless by agreement was disputed by the workman. The county court judge found that the incapacity was permanent "to the extent at least of the weekly payment of 8s. 10d.," and awarded that it should be redeemed at the fixed rate, which was agreed at £221 6s., but added a declaration that the redemption was without prejudice to the continued validity of the other terms of the agreement of 1913, and also without prejudice to any further liability of the company to pay further compensation if at any time it should be found that the incapacity had increased. The company appealed against the declaration that the redemption was without prejudice to the other terms of the agreement and the further liability, and the workman entered a cross appeal against the award of redemption, on the ground that it was not a weekly payment which was redeemable. The Court of Appeal were divided in opinion. They all agreed that the declaration as to the continuance in force as to the other terms of the agreement and as to possible further liability was wrong, and must be set aside, but they differed on the question whether the weekly payment was capable of being redeemed under clause 17. Bankes, L.J., held that it was not capable of being redeemed, as in his opinion the term "weekly payment" in clause 17 should be confined to cases where the weekly payment represented the full measure of the compensation to which the workman was entitled. Lord Cozens-Hardy, M.R., and Warrington, L.J., held that the weekly payment in question was capable of redemption. The result was that the appeal of the colliery company was allowed, and the award wholly set aside (subject to the workman being afforded an opportunity, if he so desired, of applying to review the weekly payment under clause 16 of the First Schedule), the proceedings to redeem being remitted to the county court judge to determine whether the incapacity of the workman was or was not permanent within the meaning of the word in clause 17, and to make an award accordingly, final and complete. There were further directions as to costs. In his lordship's opinion, Bankes, L.J., was right in the construction which he placed upon clause 17. It was obvious that redemption under that clause was to be a final settlement of all liability on the part of the employer. This it would be if the weekly payment represented the whole compensation to which the workman was entitled under the Act. But where the weekly payment did not represent the whole, but only the balance of liability which remained after taking into account any benefits or advantages which the workman might receive from the employer, and which might or might not be continued, a final settlement by redemption of the weekly payment would be grossly unjust to the workman. The true measure of compensation in such a case was the weekly payment, plus so much of the benefits or advantages conceded by the employer as would make up the difference between the statutory liability and the agreed weekly payment, and to cancel the whole liability by redemption of a part only would result in the workman being deprived of a part of the compensation to which he was entitled. On this view of clause 17 it was unnecessary to remit for consideration the question whether the incapacity should be considered as permanent within the meaning of clause 17. The judgment of the Court of Appeal and the award should be set aside, and the application to redeem remitted to the county court judge, as it was possible that an application for revision might be made. The appellant should have his costs of the appeal, and also of the proceedings which had taken place in the county court and in the Court of Appeal.

Viscount HALDANE, in concurring, said he was of opinion that the orders ought to be discharged both of the Court of Appeal and of the county court judge, and the case remitted to the county court judge to be dealt with, if it be desired, on the footing that redemption was inadmissible unless a weekly payment representing the entire compensation to which the workman was entitled had to be adjusted. He refrained from expressing any opinion on the point which had not yet arisen and had not been argued, whether before redemption was treated as admissible the whole of such a full weekly payment must have been paid for six months.

Lord SUMNER concurred in the judgment delivered by Lord Wrenbury. The opinion of the latter noble and learned lord was that the award of the county court judge was erroneous, for he redeemed part and preserved the rest of the agreed compensation. The Court of Appeal set that order aside, and, while indicating that it was open to the workman (not the employer) to apply to review under clause 16, remitted the matter to the county court judge to determine whether the capacity of the workman was "permanent," and to make an order accordingly "final and complete." That order proceeded upon the footing that, although the workman might apply under clause 16 to review, it was competent to the judge to redeem the agreement as it stood. He thought that was not so. If the employer proceeded with the application as it stood, and without making any application to review or fix the statutory compensation, the judge would no doubt deal with it accordingly. If either employer or workman made some application as above a different result might ensue. It would be for the county court judge to decide what the statutory compensation was, and whether, in the language of clause 17, "any weekly payment has been continued for not less than six months." Neither question arose upon this appeal. As to the latter, he expressly reserved his opinion upon it, and guarded himself by saying that he must not be taken to assent to the Lord Chancellor's expression of opinion that "the redemption is to be a weekly sum which has been actually paid for not less than six months." He had also purposely abstained from saying anything as to the meaning of "permanent." The question did not at present arise for decision. Appeal allowed, and case remitted to county court.—COUNSEL, for the appellant, *Douglas Hogg*, K.C., and *Shakespeare*; for the respondents, *Bairstow*, K.C., and *Alexander Neilson*. SOLICITORS, *Corbin, Greener & Cook*, for *Roley & Sons*, Barnsley; *Barlow, Barlow & Lyde*, for *Wilmshurst & Stones*, Huddersfield.

[Reported by ERSKINE REID, Barrister-at-Law.]

Court of Appeal.

Re **EGAN. KEANE *v.* HOARE.** No. 1. 17th and 22nd July.

WILL—CHARITABLE BEQUEST—SUPERSTITIOUS USES—BEQUEST FOR MASSES—1 ED. 6, C. 14, S. 7.

The law has been settled for a very long period that a bequest for masses for the dead is void.

Decision of Eve, J., *affirmed.*

Appeal by Cardinal Bourne and the Jesuit Fathers of Farm-street, Mayfair, from a decision of Eve, J. (reported *ante*, p. 620), upon a summons taken out by executors of a will. The testator, by his will dated 29th November, 1916, after appointing the defendants Keane and Cooperthwaite to be his executors, bequeathed to Dr. Hoare, Bishop of Ardagh, £300, hoping his lordship would pray for him, to

[19] The incident gave rise to an extended diplomatic correspondence (see 59 SOLICITORS' JOURNAL, p. 663).

[20] 13th August, 1915.

Westminster Cathedral for masses £200, to the Jesuit Fathers, Farm-street, £200 for masses; to the Dominican Fathers, Black Abbey, Kilkenny, £100 for masses; to the Franciscan Fathers, Kilkenny, £100 for masses. Subject to certain specific and pecuniary bequests the testator gave the residue of his money to the Jesuit Fathers, Farm-street, for masses. The executors took out this summons, making Cardinal Bourne, of Westminster Cathedral, the Jesuit Fathers, the Dominican Fathers of Kilkenny, and the next-of-kin defendants, and raised the question whether the gifts for masses were invalid. In support of the bequest it was argued that the disabling sections of the Roman Catholic Relief Act, 1829, were obsolete, that a gift for masses was good as an alms-offering to the priest, and that the decisions invalidating such gifts as being made for superstitious uses were based on the statute 1 Ed. 6, c. 14, forfeiting gifts of land for masses, and that in the present case there was no devise of land, but only a gift of money. Eve, J., held that the authorities were too strong for him to decide in favour of the bequests, and expressed the opinion that, if the law was to be declared obsolete, that could only be done by the House of Lords. The defendants Cardinal Bourne and the Jesuit Fathers appealed. *Cur. adv. vult.*

THE COURT dismissed the appeal.

SWINFEN EADY, M.R., delivering the judgment of the Court, said: The question raised by this appeal is whether several gifts to Jesuit Fathers, Franciscan Fathers, Dominican Fathers, and others "for masses," bequeathed by the will of Edward Egan, who died on 29th December, 1916, are valid. Mr. Mathew, who appeared for the appellants, stated that he did not desire to draw any distinction between gifts "for masses" simply and gifts for masses for the soul of the testator, as it would be well understood by Roman Catholics that the gifts contained in this will were for masses for the soul of the deceased. Eve, J., decided that the bequests were invalid, treating the matter as law which had long since been settled. We are of the same opinion. The law on the subject is too well settled to be shaken or disturbed by this Court, having regard to the whole course of the decisions since the statute 1 Ed. 6, c. 14: see *Adams* v. *Lambert* (*temp.* Elizabeth) (4 Co. 529), and the numerous decisions there examined; Duke on Charitable Uses, p. 126; *West* v. *Shuttleworth* (2 Myl. & K. 684); *Attorney-General* v. *Fishmongers Company* (5 Myl. & Cr. 11); *Heath* v. *Chapman* (2 Dr. 417); *Re Michel's Trusts* (22 Beav. 39); and *Re Blundell's Trusts* (30 Beav. 360). The law is different in Ireland—*Attorney-General* v. *Hall* (1897, 2 Ir. R. 426) and *O'Hanlon* v. *Logue* (1906, Ir. R. 247). The statute 1 Ed. 6, c. 14, did not extend to Ireland. The appeal is dismissed, with costs.—COUNSEL, *Mathew*, K.C., and *McMullan; J. McVeagh; Sir A. Callaghan* and *J. A. R. Cairns; Marcy.* SOLICITORS, *Witham, Roskell, Munster, & Weld; H. J. Speechley; H. Z. Deane; Ellis, Leathley, & Willes.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

Re **GODWIN'S SETTLEMENT.** Eve, J. 16th July.

TRUSTEE—BREACH OF TRUST—PERSONAL SECURITY—PROMISSORY NOTE—NEGLECT TO RECOVER—POLICY OF INSURANCE—OMISSION TO OBTAIN SURRENDER VALUE—MEASURE OF DAMAGES—TRUSTEE ACT, 1893, AMENDMENT ACT, 1894 (57 & 58 VICT. c. 10), s. 4.

Part of a trust estate consisted of a promissory note which the trustees were authorized to retain. The promisor died and one of his executors was one of the trustees of the settlement.

Held, that the trustees were not liable for breach of trust in continuing to hold the promissory note.

Where trustees neglected to obtain the surrender value of a policy, but purchased Consols for the trust to satisfy the loss,

Held, that the trustees were liable to make good to the trust the difference between the amount paid for the Consols and the surrender value.

This was an action for breach of trust. By a marriage settlement made in 1878 R. Godwin settled a sum of £2,000, secured by a promissory note of his father, and also a policy of insurance on his own life for £1,000. The trustees were to allow the promissory note to remain on its then present investment, or, with the consent of the tenants for life, to call it in and invest it as therein mentioned. The note was not called in and the promisor died insolvent in July, 1881, having appointed one of the trustees of the settlement as one of his executors. The settlor failed to pay the premiums on the policy and the trustees neglected to obtain the surrender value, but they purchased Consols for the trust to meet the loss. The plaintiff, a daughter of the settlor, and one of the beneficiaries, claimed a declaration that the defendants were liable to make good to the trust the £2,000 and the surrender value of the policy.

EVE, J.—With regard to the £2,000 this particular investment on personal security was an authorized one. The promisor died in July, 1881. The proving executors of his will included the settlor and one of the trustees of the settlement, and the plaintiff's contention is that upon this position arising, the further retention of this investment became improper, and then, or shortly afterwards, so improper as to amount to a breach of trust. I think this is the sum and substance of the plaintiff's case as to the £2,000, for no evidence has been called on her behalf, and I cannot construe the defence as an admission on the part of the defendants that the executors of the grandfather's will paid away assets to beneficiaries before providing for their testator's debts, nor is there any admission, or indeed allegation, that they had any grounds in the years immediately following the testator's death for believing that his estate was, or was likely to prove, insolvent. The investment did not in my opinion cease to be an authorized one simply by reason of the death of the promisor, and although an advance out of the trust estate to the persons who were his legal personal representatives would have been a breach of trust, inasmuch as one of the borrowers would have been also a trustee of the settlement, that is not the position with which I have to deal. Even if the investment could be said to have ceased to be an authorized one when the grandfather's executors were substituted for the promisor—and I am by no means saying that such was the case— section 4 of the Trustee Act, 1893, Amendment Act, 1894, would seem to afford a complete defence to any action to make the trustees liable for breach of trust in continuing to hold it. The promisor's estate was administered in an action commenced in 1897, and when the trustees of the settlement carried in their proof in 1904 they recovered nothing, as the estate was insolvent. I am not saying that these circumstances and the long delay do not afford grounds for suggesting remissness on the part of the trustees; but, in the absence of any evidence other than the facts I have stated, it is obviously impossible to hold that the plaintiff has established that the trustees were guilty of any breach of trust in relation to this fund. There is another difficulty in the plaintiff's way. The amount owing on the promissory note could only be called in by the trustees during the lifetime of the father with his consent. Without any evidence that he ever gave, or was willing to give, that consent I do not see how the trustees could have been made liable for not calling it in. The action, so far as it is founded on the £2,000 due under the promissory note, fails. As regards the £245, the surrender value of the policy, it could and ought to have been collected by the trustees when the father failed to pay the premiums in 1902; but, through ignorance, it was overlooked, and now that the matter has been brought to their attention the trustees, against whom no suggestion of any impropriety is made, admit their liability to make good the damage which has been occasioned by their negligence. The only question is the measure of such damage. The plaintiff puts it at £245; the defendants say they have discharged their liability by the purchase for the trust of £287 Consols, that being the maximum sum of Consols which at any time from 1902, when the policy lapsed, to October, 1906, the period during which they could have collected the £245, could have been purchased for £245. The £287 Consols were not at the date of the purchase, and are not now, worth £245. The question is whether it is open to the trustees, through whose negligence the loss of the £245 was incurred, to satisfy the claim for the damage by the appropriation to the trust estate of Consols of less value at the date of appropriation than £245. I do not think it is. In my opinion the plaintiff's contention on this part of the case is sound and ought to be upheld. The defendants are no more entitled to satisfy the loss to the trust estate by the appropriation of depreciated stock than would the plaintiff have been entitled to call upon them to purchase stock at a cost in excess of the £245 had the price in the interval risen. That this conclusion would be in accordance with authority had the £245 come to the hands of the trustees, and then been lost through their negligence is admitted; but it is said that the money was never in their possession and that their liability ought not to be measured by the amount of the fund lost, but by the amount of stock which could have been purchased with the fund had it been duly collected and invested, or, at the option of the trustees, by the amount of the fund, whichever is least burdensome when the liability is being discharged. I am not satisfied that there is anything in the cases to warrant this distinction between a fund collected and then lost and a fund lost through neglect to collect it; but here the trustees held the policy throughout, and when the premiums ceased to be paid it had in their hands a surrender value which they could have obtained at any time between November, 1902, and November, 1906. I do not therefore think it is strictly accurate to say that the £245 was never under their control, and I do not see my way to accede to the defendants' argument on this part of the case consistently with the law as laid down in *Robinson* v. *Robinson* (1 D. M. & G. 247) and the cases therein approved. I think, therefore, that the defendants are liable to make good to the trust estate the difference between the amount spent by them in the purchase of Consols and £245, and I will make a declaration to that effect and give liberty to apply.—COUNSEL, *Farwell* and *Van den Berg; Clayton*, K.C., and *J. G. Wood.* SOLICITORS, *Fowler, Legg, & Young; Devonshire, Monkland, & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Re **BOWRING. WINTLE** *v.* **BOWRING AND OTHERS.** Sargant, J. 11th July.

WILL—CONSTRUCTION—ANNUITY GIVEN FREE OF SUPERTAX—OTHER INCOME OF THE ANNUITANT—APPORTIONMENT OF THE TAX.

A testator by his will gave an annuity to his wife of £4,000, free of duty and of income tax, supertax, or any other tax or impost of that nature, to the intent that she should receive the £4,000 net per annum. The wife had a separate gross income of her own, unconnected with the will, of £1,637 a year.

Held, that supertax must be charged ratably as between the outside income on the one hand and the £4,000 on the other hand; and accordingly, that the residue of the estate must bear such proportion of the total supertax payable by the wife as the sum of £4,000 with income tax added bears to the total amount of the assessment for the purposes of supertax.

This was a summons to determine the question whether supertax directed by a will to be paid on the annuity given to the testator's wife ought to be calculated on the annuity with or without reference to any other income receivable by her during the period over which the supertax is to be paid, or how otherwise the tax ought to be calculated. The material parts of the will are as follows: "I give to my wife during her life an annuity of £4,000 free of duty and of income tax, supertax, and any other tax or impost of that nature, to the intent that she shall receive the sum of £4,000 net per annum, commencing from the time of my death," and to be payable quarterly "during the life of my wife. . . . my trustees shall apply the income of the trust fund in the manner and order following: (1) in payment of the annuity hereinbefore given to my wife and the income tax and other taxes thereon"; (2)-(4) in payment of other annual sums. . . . "My trustees may retain out of the annual income of the trust fund in every year the following annuities (free of all duty and income tax) for their own use and benefit, namely, an annuity of £100 for each of my trustees (including my wife) while acting in the trusts of this my will." The wife had a separate income of £1,637 unconnected with the will. Counsel put forward three different methods of dealing with the supertax in this case, all of which are referred to in the judgment.

SARGANT, J., after stating the facts, said: Under section 3 of the Finance Act, 1914 (4 & 5 Geo. 5, c. 10), it is provided that, as regards the first £2,500 of the income nothing shall be charged thereon, in respect of the excess over £2,500 there is to be charged 5d. for every pound of the next £500, with progressively increasing rates. It is quite obvious there are three ways at least in which the supertax on the £4,000 that has to be paid to the trustees is to be calculated. First one might take the £4,000 as if it were the sole source of the wife's income. In that case £2,500 would escape supertax altogether, on £500 there would be a supertax at a comparatively low rate, and on the next £1,000 supertax would be paid at a higher rate. If that is done the result will be that the higher rates of tax will be thrown exclusively on the additional outside income, and the trustees, who have to pay the £4,000 free of supertax, will only have to pay supertax on the last £1,500 of the £4,000. Another method, which appears equally startling in the other direction, is that the trustees shall take the additional income as being the wife's sole income; that they therefore shall consider themselves not bound to pay any supertax on that, and as regards the £4,000 they shall consider that is excepted from supertax only to the extent of the difference between the amount of additional income and £2,500, and that then they should say that the remaining £3,200 or £3,300 bears supertax at the progressively increasing rates, the result of which will be that a large amount will have to be paid by them in respect of supertax, and that in effect there will be no charge made against the wife at all in respect of supertax on her outside income. An intermediate course, in favour of which I shall give judgment, is that the supertax shall be charged ratably as between the outside income on the one hand and the £4,000—increased, of course, by the fact that that is free of income tax—on the other hand, so that the ratable proportion of each source of income will be free of tax up to the £2,500, and that a ratable proportion of each of the successive increases of income beyond that amount will be also free of supertax. Whichever of the three courses is adopted it seems to me that the wife will be getting her £4,000 a year net. The only question is really the position which the income of £4,000 a year occupies in her budget as compared with the position of her outside income which she has from her own independent resources. I have not complicated the matter by speaking of the £100 annuity, because that, of course, must be dealt with on the same basis. I do not see any reason why the Court should in fact marshal either the annuity income or the independent income, so as to say that the income comes either first or last in the total income of the wife. That is her total income, on which supertax has to be ascertained, and the various sources of income which she is entitled to must be taken ratably as making up the total income, so that an aliquot proportion of each is attributed to the first £2,500 a year which is free of supertax, another aliquot proportion attributed to the £500 between £2,500 and £3,000, which bears the lowest rate of supertax, and successive aliquot proportions attributed to other successive excesses of income, which bear ratably higher rates of taxes. I accordingly declare that the residue of the estate must bear such proportion of the total supertax payable by the wife as this £4,000 annuity, with income tax added, bears to the total amount of the assessment for the purposes of supertax.—COUNSEL, *Fairfax Luxmoore; Alexander Grant*, K.C., and *L. Mossop; Mark Romer*, K.C., and *Baden Fuller*. SOLICITORS, *Torr & Co.; Pearce & Rouse*.

[Reported by L. M. MAY, Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

"THE MATTL" Sir Samuel Evans, P. 9th, 10th and 15th July.

PRIZE LAW—ADMIRALTY—SALVAGE—REQUISITIONED GERMAN SHIP—VALIDITY OF ORDERS IN COUNCIL—MERCHANT SHIPPING ACT, 1894 (57 & 58 VICT. C. 60), S. 557—MERCHANT SHIPPING ACT, 1906 (6 ED. 7, C. 48), S. 80—MERCHANT SHIPPING (SALVAGE) ACT, 1916 (6 & 7 GEO. 5, C. 41).

The Admiralty cannot claim salvage in respect of the services of a German vessel seized as prize and ordered to be detained in the terms of The Chile *order, and subsequently requisitioned by the Admiralty. It is beyond the power of His Majesty by any Order in Council made under section* 80 *of the Merchant Shipping Act*, 1906, *to declare what class of vessel is or is not within the category of ships dealt with by section* 557 *of the Merchant Shipping Act*, 1894.

This case dealt with two very important points as to claims for salvage by the Admiralty and as to the validity of certain Orders in Council. The plaintiffs were the Lords Commissioners of the Admiralty and officers and crew of H.M.S. *Comet*, a German ship detained under a *Chile* order and subsequently requisitioned by the Government, and some tugs against a Norwegian ship, and the claim was for salvage services. All the facts sufficiently appear in the judgment. The value of the Norwegian ship was £80,000.

EVANS, P., in the course of a lengthy judgment, said: A question of law of general importance arises in this case for salvage remuneration. If *The Comet* was "a ship belonging to His Majesty" within the meaning of section 557 of the Merchant Shipping Act, 1894, it is well established that the Admiralty cannot recover salvage in respect of the services of the ship, although the commander, officers and crew, when the claim has the consent of the Admiralty, are entitled to an award. It is significant, although not conclusive, that the Admiralty themselves in their warrant and in the statement of claim describe the vessel as H.M.S. *Comet*. She was a German vessel seized in a British port on the outbreak of war and ordered to be detained by the prize court by an order in the same terms as *The Chile*. Subsequently she was requisitioned by the Admiralty and registered in the name of His Majesty. Temporary ownership by the Crown, apart from complete legal ownership, might be sufficient to constitute a ship one belonging to His Majesty where the owners completely handed her over to the Crown, who exercised both dominion and control over the ship: see *The Sarpen* (1916, P. 306), *Admiralty Commissioners* v. *Page* (1918, W. N. 193). In this case the full dominion and control was in the Admiralty, although the enemy owners would not be completely divested of the *res* until the final decree of condemnation by the Court of Prize, but a more absolute and complete temporary ownership could scarcely be conceived. I hold the Admiralty cannot claim salvage in respect of her services. By the Merchant Shipping (Salvage) Act, 1916, certain ships belonging to His Majesty, if they answer certain descriptions, are entitled to claim salvage. If the proposition that *The Comet* was not a ship belonging to His Majesty is sound, it follows that, even if she had been a vessel especially equipped with plant for salvage work she would be excluded from the right to salvage money conferred on such a vessel by the Act passed as a result of the decision in *The Sarpen*, which could not have been intended by the Legislature. *The Comet* was registered in the name of His Majesty under an Order in Council of 22nd March, 1911, promulgated under section 80 of the Merchant Shipping Act, 1906, of which clause 15 provided that such vessels should be ships belonging to His Majesty within sections 557 to 564 of the Merchant Shipping Act, 1894. In my opinion it is beyond the power of His Majesty by any Order in Council made under section 80 of the Merchant Shipping Act, 1906, to declare what class of vessel is or is not within the category of ships dealt with by section 557 of the Merchant Shipping Act, 1894, but the clause of the Proclamation indicates the view of the advisers of the Crown that this vessel was within such class. There were two other Orders in Council which purported to exclude Government vessels registered in the service of the Shipping Controller or the War Office from the category of vessels belonging to His Majesty within the meaning of section 557 of the Merchant Shipping Act, 1894. It was probably the intention of the Crown to rid such vessels from the disabilities of that section and confer on them the benefits of the 1916 Act. But this involves a confusion of thought giving rise to a misapprehension. If the vessels were excluded from the category of vessels belonging to His Majesty they would not come within the same description in the 1916 Act. What was probably intended to be done was to provide that vessels within such category would be relieved of their disability to recover salvage if they were tugs or equipped as described in the 1916 Act. But, whatever the intention was, section 80 of the 1906 Act, in my opinion, does not give any authority to the Crown by any Order in Council to affect the provisions of section 557 of the 1894 Act. I award £520 to the Master of *The Comet*, £130 to the second officer, £270 to the crew. If the Admiralty had been entitled to claim I should have awarded them £3,700.—COUNSEL, *Sir Frederick Smith*, A.-G., and *C. R. Dunlop; Laing*, K.C., and *Raeburn; Bateson*, K.C., and *D. Stephens*. SOLICITORS, *The Treasury Solicitor; Constant & Constant; Thomas Cooper & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

New Orders, &c.

New Statutes.

On 30th July, the Royal Assent was given to the following Acts:—
Finance Act, 1918.
War Loan Act, 1918.
Workmen's Compensation (Silicosis) Act, 1918.
Solicitors (Articled Clerks) Act, 1918.
Summary Jurisdiction (Ireland) Act, 1918.
Deputy Lieutenants Act, 1918.
Land Drainage Act, 1918.
Labourers (Ireland) Act, 1918.
Expiring Laws Continuance Act, 1918.
Flax Companies (Financial Assistance) Act, 1918.
Juries Act, 1918.
Parliament and Local Elections Act, 1918.
Small Holding Colonies (Amendment) Act, 1918.
And to a number of Provisional Orders and Local and Private Acts.

War Orders and Proclamations, &c.

The *London Gazette* of 2nd August contains the following:—

1. A Proclamation, dated 2nd August, under Section 43 of the Customs Consolidation Act, 1876, whereby the importation into the United Kingdom of the following articles is prohibited, viz:—Canes of all descriptions, unmanufactured or manufactured, not otherwise prohibited; crabs, prawns, shrimps and oysters, canned; red prussiate of potash.

2. An Order in Council, dated 2nd August, as follows:—

The City of Wells shall for the Autumn and Winter Assizes holden for the County of Somerset during the continuance of the present War, and for a period of six months after the termination thereof, be the place where Assizes are holden for the said County.

3. A Notice that certain names have been added to the List of persons and bodies of persons to whom articles to be exported to China may be consigned.

4. The following Notices under the Corn Production Act, 1917:—
Proposal to Fix Rates of Wages for Shepherds, Stockmen, Waggoners, and Milkmen in Northamptonshire.
Proposal to Fix Rates of Wages for Horsemen, Stockmen and Shepherds in Suffolk.
Proposal to Fix Rates of Wages for Carters, Cowmen and Shepherds in Dorset.
Proposal to Fix Rates of Wages for Carters, Cowmen and Shepherds in Berkshire.
Proposal to Fix Rates of Wages for Stockmen, Shepherds and Horsemen in Surrey.
Proposal to Fix Rates of Wages for Horsekeepers, Cowmen and Shepherds in Cambridgeshire, Huntingdonshire and Bedfordshire.
Proposal to Fix Rates of Wages for Teammen, Cowmen and Shepherds in Sussex.
Proposal to Fix Rates of Wages for Horsemen, Stockmen and Shepherds in Kent.

5. An Admiralty Notice to Mariners (No. 904 of the year 1918, revising No. 122 of 1918) relating to Scotland, East Coast. Firth of Forth—Traffic Regulations. The Firth of Forth, as well as the approaches thereto, is patrolled by Naval Patrol boats or other Government vessels. Merchant vessels and small craft are subject to inspection and search, and are liable to be fired upon in the event of disobedience to the orders given them by the patrols.

The *London Gazette*, of 6th August, contains the following:—

6. An Order in Council, dated 2nd August, under the Juries Act, 1918, varying the mode of preparing the jury lists under the Juries Acts, 1825 and 1862.

7. An Order in Council, dated 6th August, further amending the Proclamation, dated the 10th day of May, 1917, and made under Section 8 of the Customs and Inland Revenue Act, 1879, and Section 1 of the Exportation of Arms Act, 1900, and Section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited.

8. A Notice that appointments have been made to the Military Appeal Tribunals as follows: County of Lincoln (1), County of Lancaster (1), County of Stafford (1), County of Somerset (1).

9. A Notice under the Corn Production Act, 1917, as follows:—
Amended Proposal to Fix Rates of Wages for Horsemen, Stockmen and Shepherds in Kent (see item 4, *supra*).

10. A series of Admiralty Notices to Mariners, republishing various former Notices, as follows:—

(1) England, South Coast: (i) Falmouth Harbour Approach—Traffic Regulations. (ii) Penzance Bay—Traffic Regulations.
(2) England, South Coast: Tor Bay Approaches—Traffic Regulations.
(3) England, South-East Coast: Dover Channel—Traffic Regulations.
(4) Scotland, North-East Coast, with Orkney and Shetland Isles.
(5) Scotland, West Coast—Firth of Clyde, Isle of Arran: Lamlash Harbour Entrances—Traffic Regulations.
(6) Irish Channel: Rathlin Sound—Closed to Traffic.

Orders in Council.

NEW DEFENCE OF THE REALM REGULATIONS.

[Recitals.]

It is hereby ordered, that the following amendments be made in the Defence of the Realm Regulations:—

Powers of Board of Trade.

1. In Regulation 2JJ after the words "2F to 2J inclusive" in subsection (1) thereof, there shall be inserted the words "(including 2GG)."

2. In Regulation 7B after the words "unloading of wagons" in paragraph (*b*) thereof, there shall be inserted the words "by prescribing the time after the expiration of which charges may be made by railway companies for the detention of wagons or trucks or the use or occupation of any accommodation whether before or after the conveyance of any goods and."

Change of Name.

3. Regulation 14H [*ante*, p. 721] shall be amended by the insertion of the following words at the end of subsection (4) thereof:—
"or
(*d*) apply to any woman who, having been born a British subject but having become an alien by marriage, has been granted a certificate of naturalisation, or has before the tenth day of August, nineteen hundred and eighteen, been granted an exemption from the provisions of the Aliens Restriction Order relating to change of name by enemy aliens."

Currency.

4. After Regulation 30EE the following regulation shall be inserted:—
"30EEE.—(1) It shall be lawful for the Treasury to make orders fixing a maximum price for silver bullion.
(2) Any order made under this regulation may contain such supplemental provisions as appear to the Treasury necessary or expedient for giving effect to the order, and may be revoked, extended, or varied, as occasion requires.
(3) If any person sells or purchases, or agrees or offers to sell or purchase, except under a licence in writing granted by the Treasury, any silver bullion at a price exceeding the maximum

price fixed by an order made under this regulation, or contravenes or fails to comply with any of the provisions of any such order, he shall be guilty of a summary offence against these regulations."

Powers of Shipping Controller.

5. Regulation 39EE (*ante*, p. 721) shall be amended as follows :—

(1) At the end of subsection (1) there shall be inserted the words : "and requiring persons being in occupation of or having control of any premises to allow petroleum to be so discharged at or on to those premises, notwithstanding any rules, regulations, agreement, or other matter whatsoever to the contrary."

(2) In subsection (2) the words from "and if any person" to the end thereof shall be omitted.

(3) At the end of subsection (3) the following words shall be inserted : "and may contain such consequential and supplemental provisions as appear to the Shipping Controller to be necessary for carrying the order into effect."

(4) After subsection (3) the following subsection shall be inserted :—

"(4) If any person acts in contravention of, or fails to comply with, the provisions of any order made under this regulation, he shall be guilty of a summary offence against these regulations."

6. After Regulation 39F the following regulation shall be inserted :—

"39FF.—(1) With a view to providing and maintaining an efficient supply of shipping the Shipping Controller in conjunction with the Board of Trade may make orders providing for all or any of the following matters, that is to say :—

(*a*) Requiring every person employed as master seaman or apprentice on board a British ship to hold the prescribed certificate of identity and service, and prohibiting the employment on board a British ship of any person as master seaman or apprentice unless he is the holder of such a certificate ;

(*b*) Determining the persons by whom and the manner in which applications for identity and service certificates are to be made and regulating the grant of such certificates ;

(*c*) Providing for the registration of persons to whom such certificates are granted ;

(*d*) Requiring all persons concerned in the management, whether as owners, occupiers or otherwise, of seamen's lodging-houses to make returns giving the prescribed particulars with regard to the management, use, or conduct thereof ; and requiring any such returns to be verified in the prescribed manner.

(2) For the purpose of testing the accuracy of any return made in pursuance of an order made under this regulation, or of obtaining information in case of failure to make a return, any person authorized in that behalf by the Board of Trade may enter any premises belonging to or in the occupation of the person who has made or has failed to make the return, and may carry out such inspection and examination (including the inspection and examination of books) as he may consider necessary for testing the accuracy of the returns or for obtaining such information.

(3) No individual return or part of a return made, and no information obtained, in pursuance of an order made under this regulation shall without lawful authority be published or disclosed by any person except for the purpose of a prosecution under this regulation.

(4) If in any case the Board of Trade are of opinion that it is expedient to obtain information from any person in connection with any seamen's lodging-house the Board may, without making an order for the purpose, require that person to furnish them with that information, and where the Board so require any information to be furnished the provisions of this regulation shall apply to information furnished and the furnishing of information as they apply to returns made and the making of returns.

(5) Any order made under this regulation may be revoked or varied as occasion requires, and may contain such consequential and supplemental provisions as appear to the Shipping Controller and the Board of Trade to be necessary for carrying the order into effect.

(6) In this regulation—

The expression "prescribed" means prescribed by order made under this regulation :

The expressions "master" and "seaman" have respectively the same meaning as in the Merchant Shipping Act, 1894 :

The expression "seamen's lodging-house" means any house, hostel, hotel or other premises to which seamen resort or in which seamen are accustomed to lodge.

(7) Any person who acts in contravention of or fails to comply with the provisions of any order made under this regulation, or who obstructs or impedes in the exercise of any of his powers under this regulation any person authorized in that behalf by the Board of Trade, shall be guilty of a summary offence against these regulations."

Supply of Intoxicants, &c.

7. In Regulation 40 for the paragraph beginning with the words "If any member of the crew" and ending with the words "guilty of an offence against these regulations" there shall be substituted the following paragraph :

"If any member of the crew of a British ship without lawful authority gives, sells, procures or supplies, or offers to give, sell, procure or supply any intoxicant to any member of His Majesty's forces, or to any member of the forces of any of His Majesty's allies, embarked as a passenger on board the ship, he shall be guilty of an offence against these regulations."

Oath of Allegiance by Civil Servants.

8. After Regulation 45E the following regulation shall be inserted :—

"45EE.—(1) Subject to the provisions of this regulation, every person who is on the second day of August, nineteen hundred and eighteen, serving in an established capacity in His Majesty's civil service shall before the first day of November, nineteen hundred and eighteen, or before such later date as may in any special case be allowed by the head officer of the department to which he belongs, and every person who after the second day of August, nineteen hundred and eighteen, is admitted to serve in such an established capacity shall within one month after he is so admitted, take the oath of allegiance in the usual form :

Provided that a person who has in any capacity whatsoever previously taken the oath of allegiance and makes a declaration of that fact in such manner as the Treasury direct shall not be required to take the oath again under this regulation.

(2) Without prejudice to the power of any other persons to administer an oath, the oath under this regulation may be administered to the persons required to take the same by such persons, or persons of such class, as in England the Lord Chancellor, in Scotland the Lord Advocate, and in Ireland the Lord Chancellor for Ireland, may direct.

(3) For the purpose of securing compliance with the requirements of this regulation a record shall be kept in every Government department of the persons by whom the oath of allegiance is taken under this regulation and of the persons who are exempt from the requirements of this regulation by reason of having previously taken the oath.

(4) In this regulation the expression 'oath' includes affirmation as respects a person who is permitted by law to make a solemn affirmation instead of taking an oath."

2nd August. [*Gazette*, 6th August.

Board of Trade Orders.

CONTROL OF CANALS, NO. 2 ORDER, 1918.

The Board of Trade deeming it expedient for the purpose of securing the public safety and the defence of the Realm, that the Stourbridge Canal should pass into their possession, hereby order as follows :—

1. Regulation 9H of the Defence of the Realm Regulations shall apply to the Stourbridge Canal.

2. This Order may be cited as the Control of Canals, No. 2 Order, 1918.

22nd July. [*Gazette*, 26th July.

THE RAILWAY WAGONS CENSUS ORDER, 1918.

[Recitals.]

1. This Order applies to all railway wagons (including tank wagons) which are not owned by a railway company.

2. Any person who, on the first day of August, 1918, is for the time being in possession of a railway wagon to which this Order applies shall, on or before the fourteenth day of August, 1918, make a return to the Board of Trade in the form set out in the schedule hereto, giving the information specified in such form with regard to every such wagon in his possession.

4. Where any person who, on the first day of August, 1918, is in possession of any such wagon has hired the same from any other person for a less period than three calendar months, such person shall, in lieu of making such return as aforesaid, furnish to the Board of Trade the name of the person from whom he has hired the said wagon, and the distinguishing number thereof, and the return relating to such wagon shall be furnished by the person by whom such wagon has been let on hire.

6. This Order may be cited as The Railway Wagons Census Order, 1918, and does not apply to Ireland.

25th July. [*Gazette*, 26th July.

THE ROAD TRANSPORT (No. 2) ORDER, 1918.

1. The Road Transport Board may issue instructions as to the collection and delivery of goods by vehicles and for road transport either generally or in any particular area, and may by such instructions limit the number of deliveries or collections which any one trader or owner of such vehicles may make in any period as respects any class or classes of goods or in any particular district, and may prescribe the conditions on which any goods may be carried by road.

4. The Road Transport Board may appoint Officers to be known as Divisional Road Transport Officers for such districts of the United Kingdom, subject to the approval of the Board, as they may think fit, and such Officers shall be responsible for the enforcement of any instructions issued under this Order, and may prosecute offences against this Order.

6. This Order may be cited as the Road Transport (No. 2) Order, 1918. [*Gazette*, 30th July.

26th July.

THE PITWOOD ORDER, 1918.

1. For the purposes of this Order, Great Britain shall be divided into areas called Pitwood areas of supply as defined in the First Schedule hereto.

The expression "Pitwood" means pitprops, sawn props and timber in the round which is intended for use in mines.

2. On and after the 12th day of August, 1918, no person shall deliver, move or consign or cause or permit to be delivered, moved or consigned pitwood from one area of supply to another except under and in accordance with the terms of a permit granted by the Controller of Timber Supplies or by a person duly authorised on his behalf.

3. From the date of this Order no person shall buy or sell or offer to buy or sell pitwood (whether in selected sizes or otherwise) at prices exceeding those set forth in the Second Schedule hereto; provided that the Controller of Timber Supplies by notice under his hand may from time to time alter such prices, and the prices as altered shall thereafter be the maximum prices at which pitwood may be bought or sold.

8. This Order may be cited as the Pitwood Order, 1918.

NOTE.—Applications for permits under paragraph 2 are to be made as regards England and Wales to the Controller of Timber Supplies, 80, Newman-street, Oxford-street, W. 1, and as regards Scotland to the Board of Trade (Timber Supply Department), 1, Queen-street, Edinburgh.

FIRST SCHEDULE.

[Pitwood Areas of Supply.]

SECOND SCHEDULE.

[Maximum Prices of Home Grown and Imported Pitwood.]

29th July. [*Gazette*, 30th July.

Divorce of Foreigners in Japan.

International Law Notes has received from its Tokio correspondent the following item of legal news:—

An interesting point, on which it would perhaps be improper to comment in the meantime, has been raised in the Japanese courts in a suit *Davis* v. *Davis*. A British resident has commenced a suit of divorce, citing another foreign resident as co-defendant. The whole matrimonial life of the parties appears to have been spent in Japan, but on the ground of their nationality curious questions arise regarding the proper law to be applied. Since *Brinkley* v. *Attorney-General for England* (15 P. D. 76) the essential identity of Japanese with English ideas of marriage as an institution appears to be established, although the incidents of the relationship may and do differ. But whether a Japanese court will entertain jurisdiction to dissolve the marriage of foreigners and, if so, what law it will apply to (1) their conduct and (2) its consequences are interesting subjects of debate. The decision in *Davis* v. *Davis* will be of great interest.

In the House of Commons on the 1st inst., Sir G. Cave, replying to Mr. Hemmerde, said: Interned enemy aliens are not allowed to marry. In the case of those who are not interned there is no direct power to prohibit marriage between a British subject and an enemy alien, but such a marriage can be prevented by interning or repatriating the enemy alien, and early in the war it became necessary to take steps for that purpose, particularly in the case of German women who attempted to escape their liability to repatriation by going through the form of marriage with a British subject. All cases, therefore, in which one of the parties to a proposed marriage is an enemy alien are now reported to the Home Office, and such marriages are not generally allowed except in the case of persons who, though technically enemies, belong to races which are friendly to the cause of the Allies.

Obituary.

Qui ante diem perlit,
Sed miles, sed pro patria.

Captain Frederic A. Drake.

Captain FREDERIC AUGUSTUS DRAKE, Yeomanry, who was drowned at sea in the sinking of a transport on the night of 26th May, was born on 21st March, 1883. He was the elder son of the late A. F. Drake, of Winterbourne Lodge, Lewes, and was educated at Horris Hill, Newbury, and Winchester. On leaving school he took up law as a profession. He was admitted as a solicitor in 1907, and just before the commencement of the war became a partner in the firm of Messrs. Williams & James, of Norfolk House, Strand. He received his commission in June, 1915, and joined his regiment in Egypt in December, 1916. He was slightly wounded at the Battle of Gaza in April, 1917, but was able to take part in subsequent operations in Palestine, including the charge of the Yeomanry at Huj in November, 1917, and the taking of Jerusalem. He was adjutant at the time of his death, and, as ship's adjutant, it was largely due to his efforts that so many were saved. After the operations in Palestine last autumn, his commanding officer, who lost his life at the same time, wrote of him:—"He did exceptionally good work throughout the operations from Beersheba to the end of December, 1917, especially in the actions at Ras-el-Nagb, Berkusie, and Huj, where his services were invaluable to me. His duties were carried out under very difficult circumstances, and mostly under fire." Others among his brother officers and friends wrote:—"He was a splendid adjutant to his regiment, hard-working, capable in every way, and invariably courteous. Officers and men appreciated his good qualities, and were fond of him. He leaves a big blank in the regimental life, and will always be thought and spoken of with a real affection." "He was one of the straightest and truest men I ever met, and a splendid example of a godly layman. To know him was to realise what a beautiful nature he had. His faith was the great attraction about him." Captain Drake married, on 30th April, 1914, Isabel, third daughter of the Hon. Arden Adderley, of Fillongley Hall, Warwickshire, and he leaves a daughter, born in February, 1915.

Legal News.

Information Required.

TO SOLICITORS AND OTHERS.—Will any person having or knowing of a will made by Miss Emma Ellen Milsom, of the Glenroy Hall Hotel, St. Michael's-road, Bournemouth, and of Bristol, who died 20th May, 1918, please communicate with Barry & Harris, solicitors, 50, Broad-street, Bristol?

Appointments.

The Right Hon. THOMAS FRANCIS MOLONY, K.C., has been appointed to be Lord Chief Justice in Ireland. Appointed Solicitor-General for Ireland in 1912, says the *Times*, Mr. Molony became Senior Law Officer in the following year, and he had held that position only for a month when he was raised to the Bench in succession to the late Mr. Justice Wright. In May, 1915, he was made a Lord Justice of Appeal on the death of Lord Justice Moriarty. Mr. Molony had a distinguished career at Trinity College, Dublin, where he graduated as senior moderator in history and political science. He was called to the Irish Bar in 1887, and to the English Bar by the Middle Temple in 1900. He is in his fifty-third year.

The Right Hon. JAMES O'CONNOR, K.C., has been appointed to be a Judge of his Majesty's Court of Appeal in Ireland. Mr. O'Connor was appointed Solicitor-General on the promotion of Mr. Pim to be Senior Law Officer in 1914. When Mr. Pim was raised to the Bench in 1916, Mr. O'Connor became his successor. In April last he was made a Judge of the Chancery Division on the retirement of Sir Dunbar Plunket Barton. The new Lord Justice is forty-six years of age. He was called to the Bar by the King's Inns in 1900.

Mr. JAMES HUNTER GRAY has been appointed a King's Counsel. Mr. Gray was called to the Bar at the Middle Temple in 1895. For many years he has had a considerable business in patent and trade-mark cases.

Mr. ERNEST GREENWOOD, Solicitor-General for Sierra Leone, has been appointed Attorney-General for Nigeria. Mr. Greenwood, who is the eldest son of Dr. Harry Greenwood, of Lincoln's Inn, was called to the Bar at Lincoln's Inn in 1899. In 1910 he went out to Lagos as Assistant Commissioner, being subsequently appointed Police Magistrate there, and then Solicitor-General of Sierra Leone.

Changes in Partnerships.

Dissolution.

BENJAMIN BURTON and ALBERT BURTON, solicitors (Burton and Son), Bank-chambers, Blackfriars-road, S.E., and 221, Streatham High-road, S.W., 4th August. [*Gazette*, 6th August.

General.

The Lord Chief Justice has arrived in England from the United States.

Mr. C. H. King, Official Receiver in Bankruptcy for Bristol, has been appointed to be also Official Receiver for Gloucester and Cheltenham, as from 1st September next.

The Committee of the Privy Council under the Titles Deprivation Act met in the Council Chamber, Whitehall, on the 1st inst., and adjourned to consider their report, which will be laid before both Houses of Parliament when the Session is resumed in October.

Sir William Collins, Sir Willoughby Dickinson, Mr. Godfrey Locker-Lampson, Mr. Neville, Mr. John O'Connor, and Mr. Tyson Wilson have been appointed on the Select Committee of the House of Commons to act with the Committee appointed by the House of Lords to deal with the Criminal Law Amendment Bill and the Sexual Offences Bill. It is expected that the Lords Committee will be constituted shortly.

The *Times'* special correspondent at Berne, in a message dated 30th July, says: A comprehensive scrutiny of the Yugo-Slav Press shews that the question of the unity of the three branches of the Yugo-Slav nation is no longer a matter of discussion, but is accepted as a principle among Serbs, Croats, and Slovenes. There is the most complete agreement among the three races on fundamental principles, and the will of the people becomes every day more distinct to create an independent State of Serbs, Croats, ad Slovenes at the cost of any sacrifices whatever.

In the House of Commons on Monday, Mr. Balfour, in answer to Mr. Lees Smith, said: No one with authority to act on behalf of any enemy Power has recently made any proposals or suggestions to his Majesty's Government in the direction of peace negotiations; nor have we received any communication from the Allied Governments to the effect that such proposals or suggestions have been made to them. Mr. Lees Smith: May I ask whether any proposals of an unofficial character were discussed at the Conference held not long ago at Versailles? Mr. Balfour: I know nothing about that.

At Marlborough-street Police Court on 1st August, says the *Times*, before Mr. Mead, W. H. Kates, of Buchanan-gardens, N.W., was summoned by the Law Society for falsely pretending to be a solicitor. It was stated that the defendant had been authorized by a tradesman to collect a debt of £6 from a woman. On 24th April he wrote to her, saying that he was instructed to apply for payment, and that, if he did not receive the money by 26th April, he should take proceedings for its recovery. In defence it was urged that Mr. Kates had no intention of representing himself to be a solicitor. Mr. Mead imposed a fine of £10 with £3 costs.

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, July 26.

CITY TRUST LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before Aug 26, to send in their names and addresses, and particulars of their debts or claims, to R. E. Moore, 46A, Pall-mall, liquidator.

OXYGEN & DRUM CO, LTD. (IN LIQUIDATION).—Creditors are required, on or before Aug 22, to send their names and addresses, and the particulars of their debts or claims, to H. J. Morland, liquidator.

RICHARD DICKESON & CO, LTD.—Creditors are required, on or before Sept. 21, to send their names and addresses, and the particulars of their debts or claims, to Charles George Morgan, 107, Cannon st, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—TUESDAY, July 30.

ESKSIDE STEAM SHIPPING CO, LTD.—Creditors are required, on or before Aug 31, to send their names and addresses, and the particulars of their debts or claims, to Mr. William Henry Robinson, Ellerburn, Well Close sq, Whitby, liquidator.

INSTITUTE OF DECORATIVE DESIGNERS, LTD.—Creditors are required, on or before Aug 12, to send their names and addresses, with particulars of their debts or claims, to John Frederick Lea, Rookwood, Sal ott rd, Beddington, Surrey, liquidator.

SHANNON & SHANNON, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before Sept. 14, to send their names and addresses, and particulars of their debts or claims, to Frank Brierley, 32, King st West, Manchester, liquidator.

STANLEY EARLE (OLDHAM), LTD.—Creditors are required, on or before Aug 20, to send their names and addresses, and the particulars of their debts or claims, to Mr. John Berry, 27, Union st, Oldham, liquidator.

THOMAS SMAILES & SON'S STEAMSHIP CO, LTD.—Creditors are required, on or before Aug 31, to send their names and addresses, and the particulars of their debts or claims, to Mr. Richard Smailes Victoria pl, Whitby, liquidator.

TUDOR LAUNDRY, LTD.—Creditors are required, on or before Aug 5, to send their names and addresses, and the particulars of their debts or claims, to Arthur Wright, 86, New st, Birmingham, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, Aug 2.

DEVON INVESTMENT CORPORATION, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before Aug 31, to send in their names and addresses, with particulars of their debts or claims, to Frederick John Dart, 91, St Leonard's rd, Exeter, liquidator

HENRY PNEUMATIC TYRE CO, LTD.—Creditors are required, on or before Aug 21, to send their names and addresses, and the particulars of their debts or claims, to William James West, Russell chmbrs, King st, Nottingham, liquidator

TIN AND TRADING COMPANY OF NIGERIA, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before Aug 17, to send their names and addresses, and the particulars of their debts or claims, to William Bayford Stone, 90, Cannon st, liquidator.

TRINIDAD OIL & TRANSPORT CO, LTD.—Creditors are required, on or before Aug 30, to send in their names and addresses, and particulars of their debts or claims, to A. O. Chudleigh, 48, Cannon st, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, July 26.

Wex & Co, Ltd.
Wolverhampton Picturedromes, Ltd.
A J Lythoer, Ltd.
Testhiets, Ltd
Anchor Tin Mine, Ltd.
Knoyle & District Agricultural Co-operative Society, Ltd.
Deddington Steamship Co, Ltd.
County Gentleman Publishing Co, Ltd.

London Gazette.—TUESDAY, July 30.

Coates, May, Shepherd & Co, Ltd.
Institute of Decorative Designers, Ltd.
Mysore Southern Extension Syndicate, Ltd.
Premier Tati Monarch Reef Co, Ltd.
Ecclesiastical Gazette, Clergy List & Clerical Guide, Ltd.
Tudor Laundry, Ltd.
Westgate on Sea and Birchington Golf Links Co, Ltd.
Jarrott, Ltd.
Blitz & Co, Ltd.
Tasmanian Copper Co, Ltd.

London Gazette.—FRIDAY, Aug. 2.

Callicultura, Ltd.
Fruit Juice Co, Ltd.
Trinidad Oil Leases, Ltd.
D. Butt, Ltd.
Pryor & Part, Ltd.
Robert Atkinson (London), Ltd.
Dutch Paper Pulp Co, Ltd.
Birmingham Dispensary, Ltd.
Bellomo, Ltd.
Devon Investment Corporation, Ltd.
Brown Bayley's Steel Works, Ltd.
Hound Brand Works, Ltd.
Trinidad Oil & Transport Co, Ltd.
British Red Ash Collieries, Ltd.
S. Arthur, Ltd.
Oxygen & Drum Co, Ltd.
Devonport & District Tramways Co.

London Gazette.—TUESDAY, Aug 6

British Still Tube Co, Ltd.
Palace Theatre & Varieties Co (Hastingdes), Ltd.
Friendly Societies Hall Co, Ltd.
Hebden Bridge Fustian Manufacturing Co-operative Society, Ltd.
R Barrett & Son, Ltd.

Winding-up of Enemy Businesses.

London Gazette.—FRIDAY, July 26.

J. ROSSNER & CO, LTD.—Creditors are required, on or before Aug 31, to send, by prepaid post, full particulars of their debts or claims, to W. Roe Sharp, 30, Brown st, Manchester, Controller.

London Gazette.—TUESDAY, July 30.

METAL & MACHINERY SYNDICATE, LTD.—Creditors are required, on or before Aug 2, to send their names and addresses, together with particulars of their debts or claims, to Percy H. Green, 60, Watling st, Controller.

WALLEY & UHLER AND GEORGE WALLEY & SON.—Creditors are required, on or before Sept. 23, to send their names and address s, and particulars of their debts or claims, to Alfred White, 26, Pall Mall, Manchester, Controller.

Creditors' Notices.

Under Estates in Chancery.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, July 26.

BRIDGWATER, HERBERT WILLIAM PUGH, Brighton, Insurance Broker Sept 30 Leonard Clow & Co v. Marcombar, Astbury, J. Gerald Maltby Todd, 14, Southampton st, Bloomsbury

London Gazette.—TUESDAY, July 30.

POWELL, CHARLOTTE ELIZABETH, Sandymount, Dublin Sept 15 White v. Bellairs and Others, Sargant, J William Robert Lloyd Jones, 1, Dean's yard, Westminster

London Gazette.—FRIDAY, Aug. 2.

LAKE, HENRY WALTER, Bloomfield avenue, Palmer's Green Oct 1 T. R. Roberts, Ltd, v. Lake, Master Satow Arthur Walker Cree, 13 Gray's inn square

WILLOUGHBY, Sir JOHN CHRISTOPHER, Charles st, Berkeley sq Oct 1 Mossop v. Greville, Astbury, J. Dawson & Co, 2, New sq